Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International, Inc.	)	WC Docket No. 02-89
	)	
Petition for Declaratory Ruling on the Scope of The Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)	)	

REPLY COMMENTS OF PAGEDATA

Qwest Communications International Inc. ("Qwest") asks the Commission to declare which types of negotiated contractual arrangements between incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") are subject to the mandatory filing and 90-day state commission approval requirements of 47 U.S.C. §251(a)(1). PageData is a small CMRS carrier in Idaho that has been directly impacted by Qwest's actions with "secret" agreements. We are neither attorney's nor eloquent of speech, but PageData herein files these reply comments.

Verizon is in error in its Reply Comments that all agreements do not need to be filed. Should individual carriers have to depend on LECs to validly determine whether or not an agreement is an interconnection agreement? Recent evidence brought forth by Minnesota, New Mexico, and Iowa in their comments have shown that LECs (specifically Qwest) have not reliably filed all interconnection agreements. This is why the whole situation has come before the FCC now. This is Qwest's modus operandi– when they get caught they try to make things as confusing as possible and bring up every side issue that is possible. They ask for dismissals, extensions, and obfuscate the issue.

There is more than one way to create an interconnection agreement – non-compete, discount, and joint venture provisions to name a few. Instead of handling discrimination after the fact, the FCC should handle it ahead of time and require all agreements to be filed.

PageData agrees with the states of New Mexico and Iowa's interpretation of section 252(i) that requiring all contracts to be filed limits LECs ability to discriminate. If LECs are not required to file all agreements then this opens the door for LECs to discriminate against carriers by using "business to business" agreements or "settlement" agreements. Preferential dispute resolution, such as better access to decision makers (executives), frees up legal resources and time. Even so-called settlements on a retroactive basis give the involved parties preferential treatment that does affect the companies on a going forward basis. If it has anything to do with rates, payments, or forgiveness of debt then it is an interconnection agreement.

Otherwise discrimination can easily be hidden in day-to-day business agreements such as reduced rates for billing a larger or smaller portion of collection fees. If a carrier is given a price differential for non-regulated services, this should be reflected in a filed agreement. Qwest has been paying Eschelon $16 per line per month for giving poor service and for resources associated with audit, traffic studies and hiring personnel with expertise in access issues[1]. This agreement in essence lowered Eschelon's billing rate. However, this would not be reflected on the rate schedule that Qwest wants to file if its petition is granted.

Included in the interconnection agreements, made public by Minnesota, Iowa and New Mexico, are noncompete agreements that are in fact interconnection agreements. These are noncompete agreements because the CLECs involved (Covad, McLeod, and Eschelon/ATI) agreed not to participate in Qwest's Section 271 application process or not to oppose the US West/Qwest merger in exchange for preferential treatment and money.

In this age of telecommunications there are no proprietary network configuration and technology, especially when you are sharing it with the LEC in order to get interconnected. Those considerations should be weighed before outsourcing with a LEC.

Any service that the LECs provide should be at a published rate, such as DSL or a consumer phone, because the LEC cannot charge one consumer a different regulated rate for a service than another consumer. They can provide special prices for unregulated

---

[1] Qwest's letter dated July 3, 2001 to Eschelon Telecom and Eschelon's letter dated February 8, 2002 to Qwest

services as long as it is published and contains all of the conditions for the special price, so anyone can meet the same terms and conditions to receive the special price.

PageData is appreciative that Minnesota, New Mexico, and Iowa have made various "secret" agreements, that Qwest has been a party of, available to the public. There are many provisions (that were previously unknown) in these agreements that would settle currently unresolved disputes between Qwest and PageData. As has been stated by other commenters, a carrier can neither "pick" nor "choose" what it does not know about.

In contradiction to the First Local Competition Order[2] Qwest has been trying to limit what telecommunications services PageData offers. Qwest has been opposed to PageData supplying Internet services while Eschelon has been offered the best reciprocal compensation rates for Internet service in any of Qwest's states[3] and McLeod has been offered "bill and keep" for local and internet-related traffic.[4]

Qwest has also refused to install facilities so that one competitor has an advantage over another. PageData contacted Qwest and requested a single point of connection in the LATA on August 29, 1998. By letter dated September 8, 1998 PageData asked that Qwest install ten T-1s at our facility for anticipated increased traffic because PageData was in the process of negotiating to buy other paging carriers and ISPs. Over three years later and after many follow-up letters and requests, PageData still has not received the ten T-1s as requested. Neither were we given the opportunity to have a single point of presence in the LATA. Despite many letters and conversations with Qwest, Qwest has failed to give back monies for payments for Qwest delivered traffic.

PageData and two other paging companies joined together and filed a complaint at the Idaho Public Utilities Commission (PUC). At the same time we were before the Idaho PUC to reach a settlement with Qwest and Qwest was denying our requests, Qwest made sweet settlement deals with Covad, McLeod, Eschelon and others. Qwest has settled with AirTouch Paging, Arch Paging, Metrocall, and TSR while the three Idaho

---

[2] *First Local Competition Order*, ¶ 27, "This Commission also concludes that incumbent LECs are required to provide access to network elements in a manner that allows requesting carriers to combine such elements as they choose, and that incumbent LECs may not impose restrictions upon the uses to which requesting carriers put such network elements."

[3] *Stipulation between ATI and US West* dated February 28, 2000, page 3, paragraph 7

[4] . *Confidential Billing Settlement Agreement* between US West and McLeod, pages 3, 4

carriers and Qwest could not come to any kind of settlement. All the while Qwest was claiming to treat us the same as other carriers. These secret settlements and others are binding other competitors from speaking out. The Idaho PUC appointed Liberty Consultants as a hearing examiner to facilitate settlement of our case. We have included in Attachment A excerpts from testimony given before the hearing examiner in July 2001 that is relevant to these comments regarding Qwest's treatment of settlement agreements. This shows a real life situation of how LECs use these secret interconnection agreements with word games to avoid filing with the PUC so that other carriers may opt in.

It was revealed to us from Minnesota's comments that Covad, McLeod, and Eschelon had provisions in the nonfiled secret interconnection agreements that we could have opted into that would have saved us a tremendous amount of money and time. After three years we still do not have our ten T-1s installed. Then we discovered in the Covad agreement that had we opted into this provision we would have gotten our facilities installed in 72 hours and 8 days for complex orders. We also discovered in the Eschelon agreement that Eschelon got credited back all disputed accounts. Qwest settled with McLeod and gave back $29 million in refunds. Once the spotlight was shown on Qwest's business practices by Minnesota, Qwest tried to cancel the previous Eschelon agreements with a new agreement dated March 1, 2002 and offered to pay Eschelon $7.9 million to miraculously settle disputes. If we had known of these provisions we would not be in the situation we are in today.

The preferential treatment of Covad, McLeod, and Eschelon by Qwest has skewed the settlement process and Qwest's section 271 application. Without this preferential treatment they would still be complaining like we are. None of them have had to wait over three years and counting to receive requested facilities or refunds for overcharges under the Telecommunications Act. McLeod would have had to file for bankruptcy sooner if they would not have received their $29 million refund.

We would like to take the opportunity to have someone at the FCC investigate this situation and deny Qwest's section 271 application until it is resolved. The three paging carriers who filed a complaint at the Idaho PUC, and other carriers in Qwest's 14 state territory have been financially and economically discriminated and disadvantaged by not having access to these secret interconnection agreements.

For all the above reasons, the Commission should deny Qwest's declaratory ruling petition.

Respectfully Submitted,

_____

Joseph B. McNeal

PageData
6610 Overland
Boise, ID 83709
(208) 375-9844

June 20, 2002

Attachment A

TESTIMONY EXERPTS

Idaho PUC Case No. USW-T-99-24, Evidentiary Hearing, July 2001, Testimony Transcripts Pages 473- 482, Cross examination of Sheryl Fraser (emphasis added)

Jim Jones (Idaho Petitioners' attorney)
Bill Batt (Qwest's attorney)
John Antonuk (Hearing Officer, Liberty Consulting)
Sheryl Fraser (Qwest employee)

Q. BY MR. JONES: Are you aware of any Agreements that Qwest has made to settle disputes similar to this one?

A. Well, I'm – I don't think we have any that are similar to this, but we certainly have negotiated Settlements with various paging companies. Before the TSR Order and after the TSR Order, we've negotiated Settlements.

Q. Any here in Idaho that you're aware of?

A. No, I – yeah. Yes.

Q. And who would that be?

THE WITNESS: Can I tell them? Is that –

MR. BATT: This is going to be something I'll have to discuss. The Settlement Agreements – and I believe I've provided the form of Agreement we've been using – they all contain provisions that restrict us from revealing the terms of the Settlements. I'm not sure if they deal with restrictions from revealing the name. That would be an issue that I think has been contended by at least one paging company that restricted us from revealing the name.

HEARING OFFICER: Are you going to be happy with just the name, or are you going to want to go to the terms and conditions?

MR. JONES: I think I'm going to want to see the details, because it's my belief that under Section 251 of the telecommunications Act of 1996, those have to be filed with the Commission just like an Interconnection Agreement.

HEARING OFFICER: Well, then let's kind of, you know, go on the premise, Mr. Batt, that – let's not defer your objection. Let's deal with it now.

MR. BATT: All right. Then I will object on the grounds that it calls for confidential information that we're not at liberty to reveal absent a Court Order.

HEARING OFFICER: Yeah, and I'm certainly not going to be in a position to do something here that sort of calls into question the ability of parties in other places to keep Settlements confidential since the law generally favors them, so if there's a specific citation that someone can give me that says that there's something that Congress has done to reverse that principle under these circumstances I'll entertain it; otherwise, I'm not going to allow the question to go to the aspects of Settlements that are required to be kept confidential by the terms of those Settlements.

MR. JONES: Well, the problem I see is that under Section 252 of the Telecommunications Act, subsection I, Availability to Other Telecommunications

Carriers, it says the local exchange carrier shall make available any interconnection service or network element provided under an Agreement proved under this section in which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the Agreement.

HEARING OFFICER: **Have those Settlement Agreements been approved by this Commission**, Mr. Batt?

MR. BATT: **No, they haven't. In our view, those were not Interconnection Agreements and shouldn't have been filed.** We actually talked about it and decided those shouldn't be filed, and **we have approached the process of settling with paging carriers under the view that we might be subject to scrutiny for discrimination**, so we have applied similar principles, but I don't believe 252(I) applies.

HEARING OFFICER: Yeah, if there's – I think first we have to establish that we're talking about an Agreement here that's not a resolution of past differences but constitutes an offering for the future, but that's clearly, to me, the kind of Agreement that's contemplated by the section Mr. Jones just cited, so I don't think something that's strictly a Settlement of prior differences qualifies, and even if it did, sounds to me that there's no Agreement that's been approved, so there is no Agreement that's required to be made available.

If there are amendments to Interconnection Order Agreements that resulted from these Settlements, I suppose that raises a particularly interesting question, but I'm not sure that's what we're talking about here.

It sounds to me that what we're talking about is an interest in settlement of refunds for transactions that have already come and gone.

MR. JONES: Well, I think Mr. Batt conceded that these carriers are entitled to be treated in a nondiscriminatory manner, and, you know, if you look at Section 252(D)(1)(a), Item 2, it talks about nondiscriminatory; and I guess the concern I have, **if these people are entitled to the same settlement terms, a Nondiscriminatory Agreement with others, how do they know? Do they just take Qwest's word for it:** Oh, you're being treated the same as everybody else? And I have some concern about that, because I'm not sure.

And it was – it was a subject that we addressed during our conversation on May 16. At that time I asked if Bill would provide me with copies of the Settlement Agreements that had been made. He indicated that he would let me know the following week.

HEARING OFFICER: Again, if you've got some authority from the FCC that says they interpret that Section to mean that a party settling a case related to prior transactions is obliged to make the same Settlement available to others, that's fine, but I – what I know is the law that says Interconnection Agreements have to be made available on a nondiscriminatory basis. I'm not aware – and I may have overlooked it – of anything whereby the FCC has said that somehow the right that parties have generally to resolve differences between themselves and to keep them confidential is somehow compromised by the antidiscrimination provisions of the Federal Statute. I suppose the FCC might say that and a Federal Court might say that, but what I'm telling you is I'm not going to be the first person on god's earth to say that. So I want to see some authority for that, because it runs very much counter to my understanding of the importance of allowing parties to resolve differences outside of public context.

And I think that's a benefit to everybody, and in the short run, getting those Settlements may help you, but I'm telling you in the long run, it's not going to help you or anyone else in your position because it's going to mean nobody can settle anything. It's going to mean everything gets litigated. So I want to see something that says the FCC has decided that the nondiscrimination and sort of the rights related to pick and choose extend to settlements of differences over past transactions, and I don't know of any. I'd be happy to – I'd be happy to be informed of one.

MR. JONES: I wish I could inform you of one, but the only thing I can cite to you is the interconnection – or, the Telecommunications Act.

HEARING OFFICER: Okay. Yeah, if you want to ask Ms. Fraser whether Qwest is providing services henceforward from this instant on to anyone else on terms less favorable than what is being provided to you right now henceforward, that's fine. I think that's a fair question, but somehow I have a suspicion that that's not really what you care about now.

Q. BY MR. JONES: Okay, well let me ask that question:
Are these carriers that are Petitioners here being offered interconnection terms as favorable as offered to other carriers that serve Idaho, including those for which an Interconnection Agreement has not been filed with the Idaho Public Utilities Commission such as AirTouch? In other words, is AirTouch getting more or less favorable terms than have been offered to PageData, Radio Paging, and Tel-Car?

HEARING OFFICER: Not for refunds for prior transactions, but for services being provided today and in the future.

THE WITNESS: AirTouch Paging?

Q. BY MR. JONES: Right.

A. Do they do business in Idaho? I didn't think they did.

Q. Yes, they do.

A. Okay, let me make sure I understood your question, because you have access to all of the 251 Agreements that have been filed –

Q. Right.

A. -- with the Commission, so you already know that probably some of those are better than maybe what Radio Paging's Agreement is or whatever, so you already know that.

So you're asking is there another arrangement with any paging carrier that's even better than what you already know?

Q Right, such as Arch or AirTouch that do business in Idaho but for which there's no Agreement filed?

A. Well, I thought Arch had an Agreement filed, and I don't – I didn't think AirTouch Paging did business in Idaho, I really didn't.

Q. What terms does AirTouch have? I understand that –

A. So I don't know AirTouch Paging provisions because I'm not aware that they are doing business here. I'd have to research that. If they're doing business here, maybe they're doing it under a different name or something, but when we negotiated with AirTouch, I don't believe Idaho was one of the states that we negotiated. They absolutely in other states – AirTouch Paging was in nine states and Arch was in, like, 12 states.

Q Do AirTouch and Arch have state-specific provisions that say you pay so much in this state –

A. Yes.

Q. -- so much in that state?

A. Yes, they have individual 251 Contracts in each state.

Q. So for some of those multistate carriers, if they did not have an Agreement filed in Idaho but yet did business in Idaho, would it be a violation of some Agreement with Qwest not to have that Agreement filed?

A. No, it's our position that a paging carrier can get service out of the tariff, so the tariff would be the governing document for that service. You can either negotiate a 251 Agreement, or you can choose to have the tariff govern.

Q. So if there was not an Agreement filed with the PUC with either AirTouch or Arch and yet they were doing business in Idaho – paging business – then you would be charging them under tariff?

A. Right, subject to we talked about implementing the TSR Order, that we haven't updated the tariff yet to reflect that; but I will have to check that, why Arch's Contract isn't showing up wherever you were looking, because we know we definitely filed.

HEARING OFFICER: We're going to get if we don't already, pretty far afield from refunds for a period in 1999 anyway. This stuff is fairly tangential at best, I think.